HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.14034 OF 2006

Between:

Smt. Sanivarapu Padmavathamma and others
. . .Petitioners

AND

The State Election Commission and others
. . .Respondents

Counsel for the petitioners : Sri B.Vijaya Bhaskar

Counsel for the respondent No.1 : Shri V.V.Prabhakar Rao

Counsel for the respondent Nos.2&3 : Government Pleader for Panchayat Raj

Dated: 1st August, 2006

: ORDER :

PER G.S.SINGHVI, CJ

This petition filed for restraining the respondents from issuing notification for the election of Sarpanch and Ward Members of T.Velamavaripalli Gram Panchayat, Vempally Mandal, Kadapa District (for short, 'the Gram Panchayat') can appropriately be termed as frivolous and vexatious piece of litigation, which deserves to be dismissed with exemplary costs.

In paragraph 3 of the affidavit filed by her, petitioner No.1 – Smt. Sanivarapu Padmavathamma has averred that in furtherance of election notification issued in August, 2001 for the election of Sarpanch and ten Ward Members, the election was to be held on 20.08.2001. However, only one person namely, Dontireddy Obula Reddy, son of Hari Reddy filed nomination for the office of Sarpanch and no nomination was filed for Ward Members. Petitioner No.1 has further averred that Shri Dontireddy Obula Reddy was declared elected as Sarpanch. He died in the year 2003. After one year of his death, election notification dated 14.12.2004 was issued for election of the Sarpanch and Ward Members and the election was held on 21.12.2004. In that election, the deponent was elected as the Sarpanch and petitioner Nos.2 to 11 were elected as Ward Members unanimously.

In paragraph Nos.5, 6 and 7 of the affidavit, Smt. Sanivarapu Padmavathamma has enumerated the provisions of Andhra Pradesh Panchayat Raj Act, 1994 (for short, 'the 1994 Act') and pleaded that till

the completion of five years term counted from the date of election notification i.e., 14.12.2004, fresh election cannot be held, but, in complete disregard to the mandate of the constitutional and legal provisions, the respondents are contemplating to notify fresh election for the Gram Panchayat and, if they are not restrained from doing so, the right of the petitioners to hold office for a period of five years will be jeopardized.

Along with the writ petition, the petitioners have filed unsigned xerox copy of representation dated 06.07.2006 made by petitioner No.1 to District Collector, Kadapa-cum-Election Authority. They have also filed endorsement dated 07.07.2006 recorded by the District Collector, whereby he instructed the District Panchayat Officer to take note of the representation and also brief him about the position of the rules. Annexure-II is the typed copy of election programme notified in the year 1994. The remaining documents are Xerox copies of the result of election held on 21.12.2004, whereby the petitioners were declared elected as Sarpanch and Ward Members of the Gram Panchayat.

While issuing "Rule" on 13.07.2006 and making it returnable in four weeks, the learned Single Judge passed an order in W.P.M.P.No.17488 of 2006, whereby he stayed the issue of election notification and also ordered that the case be listed before the Division Bench.

In view of the direction given by the learned Single Judge, this petition has been listed before the Division Bench even before expiry of four weeks period. The same is the position in hundreds of other cases, which have been listed before the Division Bench immediately after issue of "Rule Nisi" despite the fact that the rule was made returnable in four weeks.

On 20th July, 2006, learned Government Pleader for Panchayat

Raj made a request for adjournment to enable him to file counter-affidavit. His request was accepted and seven days time was granted to the respondents to file counter affidavit. However, no counter-affidavit has been filed till today.

We have heard learned counsel for the petitioners, who reiterated the apprehension of his clients that the respondents are intending to notify election for the Gram Panchayat and submitted that if they are not restrained from doing so, the right of his clients to hold their respective offices/posts for a period of five years, which is guaranteed under Article 243-E (1) of the Constitution of India and Sections 13 and 14 of the 1994 Act, will stand violated. In the context of the averments contained in the affidavit of petitioner No.1, representation dated 06.07.2006 submitted by her to the District Collector, endorsement dated 07.07.2006 made by the latter, and the argument made by him, we repeatedly asked the learned counsel for the petitioners to show the basis of the apprehension of his clients that the concerned authority will issue notification for holding election for the Gram Panchayat in violation of the constitutional and legal provisions, but he could not give any reply. We also asked the learned counsel to show notification issued in the month of August 2001 for the election of Sarpanch and Ward Members of the Gram Panchayat as also notification dated 14.12.2004, in furtherance of which the petitioners were elected as the Sarpanch and members of the Gram Panchayat, but he failed to produce copy of the notification.

In view of the above, there is no escape from the conclusion that the petitioners have rushed to the Court without any tangible cause and their apprehension that the competent authority will notify election to the Gram Panchayat is wholly unfounded. The averments contained in the affidavit filed by petitioner No.1 have been verified to the best of her knowledge and legal advice. However, there is nothing in the affidavit to indicate as to on what basis she could make an

assertion that the respondents are going to notify election to the Gram Panchayat.

We are further of the view that the petitioners have not approached the Court with clean hands inasmuch as they have deliberately withheld the most important documents i.e., the notifications issued in August 2001 and December 2004 for holding election to the Gram Panchayat. If these documents had been produced, we could have perused the same and found out whether the assertions contained in the affidavit of petitioner No.1 are bona fide. However, this opportunity has been denied to the Court on account of non-production of the relevant documents. The petitioners have also suppressed the document showing the election of Dontireddy Obula Reddy and notification dated 14.12.2004 issued by the competent authority for holding election for the office of Sarpanch.

For the reasons stated above, we hold that the petitioners have failed to make out a case for grant of relief in terms of the prayer made and the writ petition is liable to be dismissed. Ordered accordingly. The petitioners shall pay costs of Rs.20,000/- for having filed frivolous petition and succeeded in abusing the process of the Court. The amount of costs shall be deposited with the Andhra Pradesh State Legal Services Authority, Hyderabad.

As a sequel to dismissal of the writ petition, W.P.M.P.No.17488 of 2006 filed by the petitioners is also dismissed. Interim order dated 13.07.2006 shall stand automatically vacated.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 01.08.2006

kvni/svs